



Appeal Decision

Site Visit made on 22 December 2020

by A M Nilsson BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2021

Appeal Ref: APP/V5570/W/20/3259331
326 Essex Road, Islington, London N1 3PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Onder Aydemir against the decision of London Borough of Islington.
 - The application Ref P2020/1400/S73, dated 26 May 2020, was refused by notice dated 22 July 2020.
 - The application sought planning permission for two storey rear extension and two storey side extension rear external staircase, ventilation ducting, new shopfront, alteration to roof at front; use of basement and ground floor as restaurant and upper floors as self-contained dwelling without complying with conditions attached to planning permission Ref 92/0665, dated 8 March 1993.
 - The conditions in dispute are Nos 6 and 7 which state that: 6) The rear garden shall be provided and maintained for the use of occupiers of the residential unit and shall not be used in connection with the restaurant or for any other use; and 7) The staircase means of garden access from the first and second floor maisonette hereby approved shall be provided prior to the occupation of the premises and permanently maintained thereafter.
 - The reason given for the conditions are: To ensure a satisfactory standard of residential amenity.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A separate appeal¹ has been made against the decision to refuse planning permission for a single storey rear extension to use in connection with the existing restaurant. This is subject to a separate decision.

Main Issue

3. The main issue is the effect that removing the conditions would have on the living conditions of occupants of the residential units with regard to access to outdoor amenity space, and noise and disturbance.

Reasons

4. The appeal property is a three-storey building with roof level accommodation. Due to a difference in ground levels, from the street level it is two storeys with roof level accommodation, and from the rear it is three storeys with roof level

¹ APP/V5570/W/20/3259332

- accommodation. The lower ground and ground floor level are currently used as a restaurant with the upper floors being in residential use. The section of Essex Road on which the appeal site is located is relatively commercialised with shops, restaurants and other commercial units making up the majority of street-level uses, where most units have residential properties above.
5. At the time of my visit, the land to the rear of the restaurant unit was accessible from a staircase in the ground floor of the restaurant. The area was entirely hard surfaced and was being used for the storage of a small amount of restaurant related paraphernalia. It did not appear that direct access was possible from the upper floors of the building to the area at the rear.
 6. In addition to the residential use above the restaurant, there are residential uses to either side and in the wider area overlooking the rear space. The residential property that includes part of the lower ground floor level of 328 Essex Road sits at a slightly lower level than the land at the rear of the appeal site. There is a low boundary wall separating the land at the rear of the appeal site with the land to the rear of 328 Essex Road which is used as a garden for that residential property. On the other side, where the land is level with the appeal site, the land also appears to serve as amenity space for the residential properties that form part of 324 Essex Road, although this land is somewhat overgrown and poorer quality than the land to the rear of 328 Essex Road.
 7. Policy DM3.5 of Islington's Local Plan Development Management Policies (2013) requires that all new residential development and conversions will be required to provide good quality private outdoor space in the form of gardens, balconies, roof terraces and/or glazed ventilated winter gardens.
 8. Although it does not appear that the rear part of the site has been used as private amenity space for the residential unit, this is contrary to the planning conditions when the units were granted consent. Removing condition number 6 would create and authorise the situation where the residential unit would have no amenity space, with the lack of any other alternative being put forward. This would not provide sufficient amenity space for the dwelling which it is intended to serve.
 9. It is put forward that removing condition number 6 would allow for the use of the land to the rear by the restaurant. Although the front of the site forms part of an active street-scene where there is likely to be noticeable levels of noise at most times, the rear of the appeal site is markedly different. It is significantly quieter and provides a welcome relief from the busy street at the front. By allowing the use of the land to the rear as part of the restaurant would bring this commercial activity to the rear of the site. It would significantly intensify the use of the land and create additional noise and disturbance for occupants of surrounding residential properties, particularly at night-time when occupants may expect a quieter noise environment.
 10. The condition requiring the use of the rear garden for the use of occupiers of the residential unit and not to be used in connection with the restaurant or for any other use, is therefore necessary. Despite being imposed on a 1993 planning permission, it remains to serve a useful purpose having regard to the current development plan and other material considerations.
 11. As I have found the condition requiring the use of the land to the rear to provide amenity space for the residential property above is necessary, it stands

to reason that such space should be accessible from the unit which it is intended to serve. As a result, condition 7 is also necessary.

12. The appellant has referred to the fact that in such dense urban environments many properties do not have access to private amenity space. Be that as it may, I have determined the appeal on its individual merits having regard to development plan policy and other material considerations. The fact that other properties do not have access to private outdoor amenity space does not justify allowing harmful development. Either way, as I have observed, many of the surrounding units do have access to private outdoor amenity space.
13. The appellant comments that the space, and access to it, have not been provided since the grant of the original permission in 1993. An appeal of this nature does not allow me to lawfully certify the breach of a planning condition. In any event, I am not presented with sufficient evidence to demonstrate that this is the case. I therefore give this argument little weight when considering whether the conditions are necessary.
14. As I have found that the conditions are necessary, and removing them would cause harm to living conditions, the appellants argument that removing the conditions would not worsen the existing situation is superfluous given that the existing situation appears to be one that has not complied with the planning conditions which I have found to be necessary.
15. The appellant has outlined that the floor area of the residential unit exceeds the NDSS in relation to space standards. It is also outlined that the London Plan Housing SPG states that 'In exceptional circumstances, where site constraints make it impossible to provide [sic] open space for all dwellings, a proportion of dwellings may instead be provided with additional internal living space equivalent to the area of private open space requirement. This area must be added to the minimum GIA'. Although I have not been provided with a copy of the SPG I do not consider that in this instance that site constraints exist that would make it impossible to provide access to private open space as referred to above. I therefore give compliance with the NDSS and reference to the SPG little weight in the appeal, which either way do not overcome the harm I have identified.
16. Therefore the conditions are necessary to ensure the development complies with Policies DM2.1 and DM3.5 of Islington's Local Plan Development Management Policies (2013) which require, amongst other things, that developments provide a good level of amenity including good quality private outdoor space, and consideration of noise and the impact of disturbance.

Other Matters

17. The appellant states that the rear garden is leased to the restaurant unit. I do not consider that this is a factor that would justify removing the conditions and allowing harm to be caused to living conditions.
18. The appellant refers to the aims of the government to support the local economy and the need for a larger commercial unit in light of the current social distancing requirement. I have taken these matters into account; however, they do not outweigh the harm that I have identified would be caused.

Conclusion

19. I therefore find that conditions Nos 6 and 7 are necessary and reasonably related to the subject matter having regard to the impacts of the development on living conditions.
20. For the reasons given above, and having had regard to all other matters raised, I conclude that the conditions should be retained in their current form and accordingly the appeal is dismissed.

A M Nilsson

INSPECTOR